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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

MARY ELLEN CRAWFORD, etc., et al.,
Petitioners,

VS.

BOARD OF EDUCATION OF THE CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the California Court of Appeal Second Appellate District

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF RESPONDENT BOARD OF EDUCATION OF THE CITY OF LOS ANGELES

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INTEREST OF AMICUS

Pacific Legal Foundation is a nonprofit corporation organized and existing under the laws of California for the purpose of engaging in litigation in matters affecting the public interest. Policy for Pacific Legal Foundation is set by a Board of Trustees (Board) composed of concerned

citizens, the majority of whom are attorneys. The Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community. The Board has authorized the filing of this brief.

Pacific Legal Foundation believes that this case is of great importance to all citizens of the United States in that it generally questions whether an amendment to a state constitution which explicitly incorporates all the guarantees of the United States Constitution can itself violate the Federal Constitution. This issue arises within the context of school desegregation and specifically queries whether the people of a state, speaking through their constitution, can limit certain court ordered remedies for segregation to those which would be allowed under the Federal Constitution.

The constitutional nature of these issues and the setting in which they arise make it clear that the impact of this Court's decision in this case will be felt by many members of the public, and particularly students and their parents, in addition to the private petitioners and individual respondent school board represented herein. Because of the national significance of the case, Pacific Legal Foundation feels that the present parties cannot adequately represent the interests of the public while at the same time representing their own localized interests.

Petitioners, respondent, and the intervenor below have consented to the filing of this brief. These consents have been lodged with the Clerk of this Court.

OPINION BELOW

The opinion of the court below is reported at 113 Cal. App. 3d 633 (1980).

STATEMENT OF THE CASE

At issue in this case is the constitutionality of article I, section 7(a) of the California Constitution, as amended by Proposition 1. This section provides:

> "§ 7. Due process and equal protection; pupil school assignment and transportation
>
> "(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligation or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation. In enforcing this subdivision or any other provision of this Constitution, no court of this state may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.
>
> "Except as may be precluded by the Constitution of the United States, every existing judgment, decree, writ, or other order of a court of this state, whenever rendered, which includes provisions regarding pupil

school assignment or pupil transportation, or which requires a plan including any such provisions shall, upon application to a court having jurisdiction by any interested person, be modified to conform to the provisions of this subdivision as amended, as applied to the facts which exist at the time of such modification.

"In all actions or proceedings arising under or seeking application of the amendments to this subdivision proposed by the Legislature at its 1979-80 Regular Session, all courts, wherein such actions or proceedings are or may hereafter be pending, shall give such actions or proceedings first precedence over all other civil actions therein.

"Nothing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan after the effective date of this subdivision as amended.

"In amending this subdivision, the Legislature and people of the State of California find and declare that this amendment is necessary to serve compelling public interests, including those of making the most effective use of the limited financial resources now and prospectively available to support public education, maximizing the educational opportunities and protecting the health and safety of all public school pupils, enhancing the ability of parents to participate in the educational process, preserving harmony and tranquility in this state and its public schools, preventing the waste of scarce fuel resources, and protecting the environment."

The instant challenge to Proposition 1 arises in the context of a case filed in the Los Angeles Superior Court in 1963. A statement of the case detailing both the factual and

procedural background of this case is set forth by respondent Board of Education of the City of Los Angeles in its brief in opposition to petition for certiorari filed with this Court and is adopted herein.

SUMMARY OF ARGUMENT

Petitioners have raised several questions in challenging the constitutionality of Proposition 1. It is not the intention of amicus to deal with each of these questions. However, Pacific Legal Foundation does strongly oppose the position taken by petitioners that Proposition 1 establishes an impermissible racial classification and is inconsistent with prior rulings of this Court and unconstitutional under the Equal Protection Clause of the United States Constitution. In making this assertion, petitioners have both mischaracterized the effects of Proposition 1 and misconstrued the applicable case law. Proposition 1 creates no racial classification nor does it impose unconstitutional burdens of the nature imposed in *Hunter v. Erickson (Hunter)*, 393 U.S. 385 (1969), upon which petitioners rely.

Further, amicus takes issue with petitioners' assertions that Proposition 1 is unconstitutional in that it removes the only effective remedy they have for educational segregation. Initially, in the absence of a constitutional violation petitioners have no right to any remedy at all, let alone any specific remedy. Accordingly, a removal of such a remedy does not in itself constitute an unconstitutional act. More specifically, in denominating court ordered pupil school assignment or pupil transportation as the only effective remedy for segregation, petitioners have chosen to ignore the nature of the ills the remedy is supposed to cure and the realities of the remedy itself.

Amicus also stresses that Proposition 1 does not inhibit the authority of local school boards to take all appropriate

measures to alleviate *de facto* segregation and that school boards are the entities best equipped to deal with the complexities of *de facto* segregation.

Finally, amicus urges the Court to consider, as does Proposition 1, the compelling public interest in enhancing all aspects of a child's education. Busing a child to a school far from his home may preclude participation in developmental extracurricular activities and discourage parental involvement and interest in school functions. In consideration of these negative educational aspects as well as the physical strain of long bus rides, Proposition 1 wisely restricts the use of involuntary busing to those instances in which it may be required as a remedy for specific constitutional violations.

ARGUMENT

I

PROPOSITION 1 DOES NOT VIOLATE THE FEDERAL CONSTITUTION

Petitioners have asserted that Proposition 1 is an explicit racial classification which violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Such a position is fatally defective from the onset.

To analyze the defects of petitioners' position, it is initially necessary to determine precisely what Proposition 1 accomplishes and what it does not. First, the Proposition provides that the California Constitution imposes upon the state, its officials, its public entities, and boards precisely the same duties imposed upon these entities by the Federal Constitution with respect to the use of pupil school assignment and transportation. It goes on to provide that in enforcing the equal protection and other guarantees of the state constitution

> "no court of this state may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution." Cal. Const. art. I, § 7(a).

This means that a California court may order a school board or other public entity to impose mandatory student assignment or transportation when it has been shown that a school district has been purposefully (*de jure*) segregated, but not when it has been shown that a district has been unintentionally (*de facto*) segregated. In this respect Proposition 1 conforms to and embodies all the guarantees of federal law, as is explicitly set forth in its text.

On the other hand, Proposition 1 does not mean that a California court cannot order remedies other than mandatory student assignment or transportation for districts found to be *de facto* segregated, and in this respect exceeds the guarantees of federal law in that federal law does not provide for any court ordered remedies unless *de jure* segregation has been proven. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976). Further, the Proposition does not prevent public entities from voluntarily imposing student assignment or transportation programs to encourage desegregation. Indeed, it explicitly states that such programs are not prohibited.

With these parameters of Proposition 1 in mind, it is difficult to comprehend petitioners' assertions that a racial classification has been adopted. As noted by respondent in its Brief in Opposition to Petition for Writ of Ce 'iorari (Opposition), if Proposition 1 embraces any classification at all, it is only one which relates to court ordered remedies for *de facto* segregation (Opposition at 15).

It is possible that petitioners, in making their arguments, have confused Proposition 1, which touches upon race by dealing with remedies for racial problems, with governmental efforts which create racial classifications. While the latter are constitutionally suspect, the former is not. This is made particularly clear in *Brown v. Califano,* 627 F.2d 1221 (D.C. Cir. 1980), in which plaintiffs challenged provisions of the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701, *et seq.* These provisions read that unless required by the dictates of the Fifth or Fourteenth Amendments, no court, department, or agency of the United States could order the implementation of a plan which would require student transportation to schools other than those closest or next closest to the student's place of residence. 20 U.S.C. §§ 1702(b), 1714(a). This Act therefore, like Proposition 1, dealt with a racial issue and had the effect of limiting forced student transportation to that which might be required by the United States Constitution, *Morgan v. Kerrigan,* 530 F.2d 401, 411 (1st Cir. 1976), *cert. denied,* 426 U.S. 935 (1976). In reviewing the challenged portions of the Act, the Court in *Brown v. Califano* explicitly found "no classification upon impermissible lines." *Id.* at 1230. With reference to Proposition 1, *Brown v. Califano* thus agrees that the Proposition's limitation of student transportation and assignment remedies to those situations in which these are required by the United States Constitution does not in itself create an impermissible racial classification.

After determining that no impermissible classification was made by the challenged provision of the Equal Educational Opportunities Act, the court in *Brown v. Califano,* 627 F.2d at 1230, did go on to add the caveat that such a determination did not prevent an equal protection challenge and noted: "Interference with the remedies necessary to implement the promise of *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), could well rise to the level of impermissible discriminatory effect and purpose." Proposition 1, however, far from interfering with the promise of *Brown v. Board of Education,* incorporates this promise through its adherence to the rights and remedies established by federal law.

In spite of the reasoning in *Brown v. Califano,* petitioners persist in their racial classification characterization of Proposition 1 and stress that under federal constitutional standards it impermissibly removes from racial minorities rights and remedies previously guaranteed to them under the California Constitution. In adopting this tack, petitioners rely most heavily upon the holdings in *Hunter, supra, and Lee v. Nyquist,* 318 F. Supp. 710 (W.D.N.Y. 1970), *aff'd,* 402 U.S. 935 (1971).

Prior to the inclusion of Proposition 1 in the California Constitution, the California Supreme Court had interpreted the equal protection clause of this constitution to place upon school boards a constitutional obligation to take reasonably feasible steps to alleviate racial segregation whether such segregation is *de jure* or *de facto.* If such steps were not taken, they could be ordered by a court. *Crawford v. Board of Education,* 17 Cal. 3d 280, 289-302 (1976). This interpretation of the equal protection clause of the California Constitution is dissimilar to the interpretation given by the federal courts to the Fourteenth

Amendment in that under the latter, a constitutional violation occurs only if a school district has been purposefully *(de jure)* segregated and absent such a constitutional violation there is no basis for court ordered desegregation. *Columbus Board of Education v. Penick,* 443 U.S. 449 (1979); *Dayton Board of Education v. Brinkman,* 443 U.S. 526 (1979); and *Pasadena City Board of Education v. Spangler,* 427 U.S. 424 (1976).

The effect of Proposition 1 is to bring the California Constitution into conformity with the Federal Constitution to the extent that now, under both constitutions, no duty exists on the part of a school board to remedy *de facto* segregation by means of mandatory student assignment or transportation programs and no such programs may be court imposed. In this respect certain desegregation remedies once available to remedy *de facto* school segregation in California no longer exist, as petitioners assert.

However, this removal of remedies does not constitute a violation of the Federal Constitution. This has been emphasized by this Court in both *Dayton I* and *II* (*Dayton Board of Education v. Brinkman,* 433 U.S. 406, 413-14 (1977), and *Dayton Board of Education v. Brinkman,* 443 U.S. 526, 531 n.5 (1979)), wherein it was determined that rescission of a governmental enactment violates the Federal Constitution only if the enactment was required by a pre-existing federal constitutional duty. In the present case, as outlined above, there exists no federal constitutional duty on the part of school boards or other governmental entities to alleviate *de facto* segregation in any manner since *de facto* segregation alone is not violative of the Federal Constitution. Accordingly, there is no federal requirement that courts, having found *de facto* segregation, order palliative measures of any sort. Indeed they cannot do so. Thus the duty imposed upon school boards to remedy *de facto* segregation and the authority given to the courts to

order such remedies, as set forth in California decisional law prior to the passage of Proposition 1, were not required by the Federal Constitution. Therefore, pursuant to the reasoning in both *Dayton* cases, the removal of such duty and court authority cannot be made an unconstitutional act.

It is not necessary, however, to rely on the *Dayton* reasoning to support Proposition 1's constitutionality. *Hunter, supra,* upon which petitioners rely so heavily also supports this position. In *Hunter,* the City Council of Akron, Ohio, enacted a fair housing ordinance. Following this enactment, the Akron City Charter was amended to provide that any ordinance enacted by the city council regulating the use, sale, rental, or transfer of any interest in real property on the basis of race, color, religion, national origin, or ancestry must be approved by a majority of the voters before becoming effective. Other ordinances did not have to obtain this voter approval. The effect of the amendment was to repeal the pre-existing fair housing ordinance inasmuch as it could not become effective until approved as specified in the amendment.

Plaintiff challenged the constitutionality of the amendment under the Equal Protection Clause of the Fourteenth Amendment and this Court determined that it was indeed unconstitutional in that it created an impermissible racial classification. However, this Court also explicitly stated that it was *not* holding that repeal of an existing ordinance violated the Fourteenth Amendment. *Hunter,* 393 U.S. at 390 n.5. Thus, it is well settled that the repealing aspects of Proposition 1 alone cannot make it unconstitutional.

This Court's act of holding the amendment in *Hunter* unconstitutional also fails to support present petitioners' position that the provisions of Proposition 1 create a racial

classification impermissible under the Fourteenth Amendment. In *Hunter*, the challenged amendment created an explicit racial classification by requiring that only ordinances dealing with racial housing matters meet with voter as well as city council approval. This was held by this Court to place "special burdens on racial minorities within the governmental process." *Hunter*, 393 U.S. at 391. This holding is quite easy to understand inasmuch as in *Hunter*, the passage of certain racial legislation required a two-step process, while the passage of other legislation required only one step. The creation of such a process was clearly in violation of previous holdings of this Court which decried the imposition of racial burdens in the electoral process. *Cf. Anderson v. Martin*, 375 U.S. 399 (1964); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

Proposition 1 is in no manner similar to the amendment in *Hunter*. In the first place, it creates no explicit racial classification. In the second, inasmuch as Proposition 1 ties California's constitutional rights and remedies to those of the United States Constitution, the only "burdens" it creates are those created by the United States Constitution, rather than those forbidden by it.

Lee v. Nyquist (Lee), 318 F. Supp. 710 (W.D.N.Y. 1970), *aff'd*, 402 U.S. 935 (1971), on which petitioners also rely is somewhat more similar to the present case than *Hunter* in that it deals with a state measure which concerns student school assignments. Again, major differences between the legislation held unconstitutional in *Lee* and Proposition 1 prevent the application of the holding in that case to the instant action.

The New York statute ruled unconstitutional in *Lee* provided that no student could be assigned or compelled to attend a school on account of race, creed, color, or national origin or for the purpose of achieving a balance of students according to race, creed, color, or national

origin except with the approval of a board of education, the majority of whose members were elected. Thus, appointed school officials were prohibited from implementing programs to achieve racial balance by means of student assignment. In addition, the New York Commissioner of Education was prohibited from ordering school board compliance with state educational policies through racial student assignment. It certainly can be argued that these flat prohibitions created impermissible racial classifications or burdens of the type held unconstitutional in *Hunter*.

However, unlike the enactment examined in *Lee*, Proposition 1 does not prohibit school officials from implementing programs of student school assignment and transportation. In fact, it explicitly allows voluntary implementation of these programs. Further, it does not hinder the carrying out of state educational policy. Rather it constitutionally defines this policy, with regard to student transportation and school assignment, as being co-extensive with federal constitutional and decisional law and provides specifically that student assignment and transportation may be ordered to effectuate this policy.

The notion that such a scheme could itself be unconstitutional is novel, to say the least, as was recognized by both the decision of the court below (*Crawford v. Board of Education of the City of Los Angeles*, 113 Cal. App. 3d 633, 654 (1980)), and by Justice Rehnquist of this Court. Justice Rehnquist noted, in discussing petitioners' assertions in a denial of respondent's application for a stay of an order of the California Supreme Court which left standing a 1980 order of the trial court in this case requiring mandatory pupil assignment in spite of the provisions of Proposition 1:

> " 'Turning to the argument that Proposition I violates the 14th Amendment of the U. S. Constitution, inasmuch as it merely limits California courts to what

the federal courts can do under the federal constitution, it is indeed difficult to accept the contention that by limiting a state court's jurisdiction to that of the federal courts, there is somehow a violation of [the] federal constitution'." *Board of Education of the City of Los Angeles v. Superior Court*, 448 U.S. 1343, 1345 (1980).

II

INVOLUNTARY BUSING IS NOT THE ONLY EFFECTIVE REMEDY FOR DE FACTO SEGREGATION

In arguing that *Hunter* and its progeny such as *Lee* require a determination that Proposition 1 is unconstitutional, petitioners stress the dire effects and "burdens" brought about by the Proposition, first in the form of the enormous litigation task that faces minority children seeking to establish *de jure* segregation in order to open the door to court ordered student transportation remedies. Petition for Writ of Certiorari (Petition) at 34-36. However, these "burdens" or effects flowing from Proposition 1 are precisely those established by the Federal Constitution. Consequently, even were the burdens of the Proposition as great as those depicted by petitioners, their creation would fail to constitute a violation of the Constitution.

Petitioners concede that they do not have an abstract constitutional right to any particular court ordered remedy for educational segregation. However, they argue that they do have such a right to effective remedies under the circumstances. Petition at 60. Characterizing court ordered student assignment and transportation as the only remedies which can effectively desegregate the Los Angeles schools and which can rectify segregation regardless of cause, petitioners then proceed to argue that the removal of these remedies also places unconstitutional burdens upon

them. Petition at 59-60. At the onset it should be reemphasized that petitioners have no federally guaranteed right to any racial proportionality in the schools unless segregation exists which was caused by intentional governmental action. Accordingly, the removal of any desegregation remedy in a situation in which only unintentional segregation exists cannot be considered an unconstitutional act. However, in characterizing student school assignment and transportation as the "only" remedies for educational segregation, petitioners have gone far beyond what has been judicially and academically accepted and for this reason, if for none other, their position warrants closer examination.

In order to assess any remedy suggested to end segregated schools, it is necessary initially to comprehend what is sought to be accomplished by an end to educational segregation. As was recognized by the California Supreme Court when the present case was before it in the initial stages:

> "[T]he goal sought to be achieved is not simply the mixing of races to satisfy statistical predilections, but rather the elimination of the varied harms to minority children which have generally flowed from the maintenance of segregated schools. [Citations omitted.] In seeking to accomplish this end, desegregation plans must be tailored to the peculiar circumstances of the school district at hand, and the adequacy of alternative courses of action need not be judged simply by the quantitative 'amount' of desegregation which each alternative is expected to achieve." *Crawford v. Board of Education of the City of Los Angeles,* 17 Cal. 3d at 308.

Accordingly, even were it true that pupil assignment or transportation were the only devices which, in Los Angeles, would produce a racial mix satisfactory to petitioners, it does not follow that this remedy is the only one available or necessary to achieve the broader goals of educational segregation.

This also was recognized by the California Supreme Court in *Crawford* when it indicated that student busing is merely "one potential tool" which might be utilized to achieve desegregation (*id.* at 309) and noted further that

> "in some circumstances busing will be an appropriate and useful element in a desegregation plan, while in other instances its 'costs,' both in financial and educational terms, will render its use inadvisable." *Id.*

In the years since the end to unlawful desegregation was mandated by this Court in *Brown v. Board of Education*, 347 U.S. 483, a significant amount of academic research and analysis has been conducted examining the effects of desegregation in general and in particular the "costs" of desegregation accomplished by mandatory student school assignment and transportation. The result of this research and analysis goes far in showing that if the goal of desegregation is "the elimination of the harms to minority children which have generally flowed from the maintenance of segregated schools," rather than a specific racial mix, as indicated by the California court in *Crawford*, 17 Cal. 3d at 308, mandatory student school assignment or transportation is not the panacea represented by petitioners.

Certain studies such as those of David J. Armor, reported in his article "The Evidence on Busing" published in *Public Interest*, No. 28 (Summer 1972), have indicated that mandatory busing of students to achieve integration does not result in the attainment of integration goals such as increased academic achievement or improved self-image

for minority youngsters or the improvement of racial relations. In fact, Armor, in the analysis of his research, found the opposite to be true and concluded that mandatory busing was *not* effective as a means to obtaining these benefits. Even proponents of the mandatory student assignment and transportation remedies, while criticizing studies and analyses such as those of Armor, have failed to demonstrate that these devices significantly alieviate problems related to academic insufficiency or racial disharmony. *See,* for example, G. Orfield, *Must We Bus?* (1978).

Further, James Coleman, whose findings in 1966 were strongly supportive of the benefits of integration for minority children (*see* U.S. Department of Health, Education and Welfare, *Equality of Educational Opportunity* (1966)), has since concluded that busing has the effect of removing any potential integration benefits from minority and white children alike in that it results in a white exodus from the affected district. *See* J. Coleman, S. Kelly, and J. Moore, *Trends in School Segregation* 1968-73 (1975). Consequently, if Coleman's conclusions are to be considered, the utilization of mandatory student transportation and school assignment techniques may serve to defeat even numerically oriented desegregation goals by reducing the possibilities of the mixing of races within a district's schools.

Although this Court has held in *Swann v. Charlotte-Mecklenburg Board of Education* (*Swann*), 402 U.S. 1 (1971), that it is within a district court's power to order the transportation of students as a remedy for intentional segregation practiced by a school district, the court has not taken the position that such transportation, even in the setting of intentional segregation, is the only effective remedy. Indeed in *Swann,* 402 U.S. at 28-31, it was recognized that there may well be valid objections to the utilization of a student transportation plan.

The references to the above conclusions regarding the problems inherent in student transportation remedies for segregation are not made in support of an argument that such remedies cannot or should not be utilized by a school board on a voluntary basis or ordered by a court if a constitutional violation has been established. That is not what this case is about. Proposition 1 allows such activity. However, petitioners have chosen to structure their constitutional argument against Proposition 1 on the basis the court ordered transportation of students is the "only" remedy for segregated schools. This is simply not the case. At the most, court ordered student transportation is merely one among "an arsenal of remedies" for segregation as was recognized by the court below. *Crawford v. Board of Education of the City of Los Angeles,* 113 Cal. App. 3d at 652. Further, this remedy is one which runs the risk of being nonproductive or even counterproductive in alleviating the detrimental effects of a segregated education and also one which threatens the process of desegregation itself. Accordingly, even were petitioners correct in their argument that the only effective desegregation remedy could not constitutionally be removed, this argument would have no effect on the constitutional validity of Proposition 1 because involuntary busing is not an effective remedy for *de facto* segregation.

III

LOCAL SCHOOL BOARDS ARE THE PROPER BODIES TO DEAL WITH DE FACTO SEGREGATION

Proposition 1 properly places the burden of addressing the problem of *de facto* segregation declaring:

> "Nothing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan." Cal. Const. art. I, § 7(a).

Even in cases of *de jure* segregation, this Court has noted the complexities of desegregation require the expertise available only at the local level.

> "Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems." *Brown v. Board of Education* (*Brown II*), 349 U.S. 294, 299 (1955).

The existence of these varied local problems is the precise reason that courts should not be quick to take on the role of superintendents of public instruction.

This principle was reemphasized in *Dayton I*:

> "But our cases have just as firmly recognized that local autonomy of school districts is a vital national tradition. (Citations omitted.) It is for this reason that the case for displacement of the local authorities by a federal court in a school desegregation case must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles." 433 U.S. at 410.

In *Austin Independent School District v. United States*, 429 U.S. 990 (1976), this Court vacated the judgment ordering a systemwide remedy of another court of appeals and remanded in light of *Washington v. Davis*. In a concurring opinion, Mr. Justice Powell noted that the Court of Appeals may have erred by a readiness to impute to school officials a segregative intent far more pervasive than the evidence justified. Justice Powell also pointed out that Austin, as is the case with Los Angeles and most larger cities, suffers from residential segregation which creates significant problems for school officials seeking to achieve a nonsegregated school district. As Justice Powell

observes, such residential patterns are typically beyond the control of school authorities and are more a function of economic pressures and voluntary preferences.

In Los Angeles, the school board is faced with much the same problems as are the boards of any multi-racial, growing city. It faces the need to select and purchase sites for construction; develop curriculum programs which will provide the best education possible; hire staff and administrative personnel; and accomplish these duties within a framework of limited budgets and rising costs. The board must also consider these factors in light of neighborhood school policies and in accordance with the varied interests of the parents and citizens of the city. Proposition 1 properly places the responsibility for implementing voluntary school integration plans, where no *de jure* segregation exists, with the political body most closely responsible to the public, the school board. Cal. Const. art. I, § 7(a).

IV

EQUAL ACCESS TO SCHOOLS REMEDIES MUST BE SENSITIVE TO THE INTERESTS OF CHILDREN AND PARENTS

It is significant that in stating the purpose of Proposition 1, the Legislature and people of California declared the amendment to be necessary to serve the compelling state interest in, among other things, maximizing the educational opportunities and protecting the health and safety of all public school pupils and enhancing the ability of parents to participate in the educational process. Cal. Const. art. I, § 7(a).

Mr. Justice Brennan, in his concurring opinion in *Dayton I*, 433 U.S. at 424, noted that a court

> "should be flexible but unflinching in its use of its equitable powers, always conscious that it is the rights

> of individual schoolchildren that are at stake, and that it is the constitutional right to equal treatment for all races that is being protected."

This passage points out an important and often forgotten element of school desegregation cases—the human element. Too many times courts impose remedies calling for racial balance in the schools based upon the percentages of the population in the area, forgetting that behind each of the numbers stands a school age child.

In *Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974), this Court declared that because local autonomy is perceived to be essential both to the maintenance of community concern and support for the public schools and to the quality of the educational process, no single tradition in public education is more deeply rooted than local control over school operations. Justice Powell, concurring in *Austin, supra*, n.7, declared that a court has the duty, in fashioning a desegregation remedy, to balance the individual and collective interests. The individual interests, as personal and important as any in our society, relate to the family and to the concern of parents for the welfare and education of their children. Families share these interests wholly without regard to race. As Justice Powell concludes, these factors should be considered in imposing a desegregation remedy the burden of which falls not upon the officials responsible for the offending action, but rather upon innocent children. *Id.*

Many factors contribute to the educational development of the nation's youth. Of these, the school plant and its teaching staff are only one element. Other factors which must be given due consideration are the importance of the parents' place in education, parental involvement in the schools through room mother and parent-teacher programs,

opportunities for extra curricular activities, adequate nutrition, and adequate exercise and rest. These factors, to a large part, are best served by a neighborhood school policy such as that adopted by the Legislature and people of California in Proposition 1. Consider, for example, the problems a parent might have in attending a parent-teacher association meeting at his child's school which is located many miles from his home. In an area such as Los Angeles, where some children are bused to schools 20 miles from home, this important part of child educational development may be totally lacking. Sending children to school many miles from their homes also places an extra burden upon parents who would like to assist in daytime school activities. Parents of modest income may be altogether precluded from helping in the classroom simply because they cannot afford the costs of transportation. Taking children out of their neighborhood schools may also diminish their opportunity to participate in extracurricular activities. Where athletics, music, or other such activities are conducted outside of regular school hours, the child who has to ride the bus may be precluded from participating. Finally, great weight must be given to the physical effects of long distance transportation on the children themselves. It is simply not equitable to extend the school day of elementary school children by many hours, in some instances, in order to comply with harsh, systemwide transportation schemes. These are the factors referenced by Proposition 1's specified purpose of maximizing students' educational opportunities, protecting their health and safety, and enhancing the ability of parents to participate in the educational process. Cal. Const. art. I, § 7(a). Because involuntary busing impinges on these compelling state interests, it is not justifiable except in those cases where indispensable to remedy specific constitutional violations.

CONCLUSION

The California Constitution, as amended by Proposition 1, gives to minority youngsters faced with alleged educational segregation all the rights and remedies guaranteed by the Federal Constitution. It also gives to them all the rights which California courts had previously found to exist under the California Constitution. The only limitation it makes is in the *remedies* a California court may now order if only unintentional (*de facto*) segregation is found to exist in a school district. In this situation, at present, a state court may not order student assignment or transportation, although other remedies may be mandated.

It is true that under California case law construing the state constitution prior to Proposition 1, the remedies for *de facto* segregation were not so circumscribed. However, this limitation does not render Proposition 1 unconstitutional since federal law does not mandate the imposition of any remedies whatsoever for *de facto* segregation. Further, it is questionable whether such limitation is, in actuality, a limitation to achieving the goals of desegregation inasmuch as student school assignment and transportation have not been shown to be truly effective remedies for the ills of a segregated school system.

Proposition 1 strikes a reasonable and proper balance between effective remedies for *de facto* desegregation and a consideration of the physical and emotional hardships caused by involuntary busing.

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